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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-eighth session

SUMMARY RECORD OF THE 16th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 16 August 1996, at 10 a.m.

Chairman: Mr. EIDE

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The meeting was called to order at 10.15 a.m.

INTERNATIONAL PEACE AND SECURITY AS AN ESSENTIAL CONDITION FOR THE ENJOYMENT OF HUMAN RIGHTS, ABOVE ALL THE RIGHT TO LIFE (agenda item 13) (continued) (E/CN.4/Sub.2/1994/29)

1. Mrs. DAES stressed the importance of item 13 and recalled that the Sub-Commission had decided to include it on its agenda in 1981, when the gross and systematic violations of human rights occurring in many countries had represented a real threat to peace: among other things, the situation of Cyprus had been mentioned. She stressed the usefulness of the supplementary working paper prepared by Mr. Bhandare (E/CN.4/Sub.2/1994/29) and, on the basis of the conclusions set out therein, remarked that the tragic events that had occurred in Cyprus on 11 and 14 August 1996 constituted a real threat to the peace and security of the entire region. On those dates, the Turkish occupying forces had transformed peaceful demonstrations into bloody occurrences in which two Greek Cypriots had been killed and many demonstrators wounded. She appealed to the Sub-Commission to express its concern over those events.

2. Mr. EGUZ (Observer for Turkey), speaking in exercise of the right of reply, said that the statement by the preceding speaker was a deliberate manipulation of the facts. The question of Cyprus had been included on the Security Council's agenda in 1964, following atrocities committed against Turkish Cypriots as part of attempts to achieve ethnic cleansing of the island and to annex it to Greece. He recalled the words of the late Monsignor Makarios, who in July 1974 had declared that Greece had violated Cyprus's independence. As for the incidents of the past few days, the demonstrations on 14 August 1996 had been planned many months in advance and had taken place despite repeated warnings from Turkey. He regretted that the events had resulted in the death of two persons but stated that the responsibility fell squarely upon the Greek Cypriots, who had organized and supported those provocations.

3. Mrs. MARKIDES (Observer for Cyprus), speaking in exercise of the right of reply, pointed out that the observer for Turkey was unable to resist engaging yet again in his familiar propaganda. The first part of his statement had nothing to do with the issue and was entirely unworthy of consideration. As for who bore responsibility for the tragic recent events in Cyprus, she referred the Sub-Commission to the report drawn up by the Secretary-General and published that very day, which clearly ascribed responsibility to the Turkish party. She also cited an article in a Turkish Cypriot newspaper that had been published two days earlier and confirmed that assessment.

4. The CHAIRMAN announced that the Sub-Commission had thus completed its consideration of agenda item 13.

REVIEW OF THE WORK OF THE SUB-COMMISSION (agenda item 3) (continued)

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (agenda item 4) (continued) (E/CN.4/Sub.2/1996/3, 4, 6 and 7; E/CN.4/1996/44)

5. Mr. CHERNICHENKO, speaking on agenda item 3, recalled the proposal to prepare a compilation of all the decisions adopted by the Sub-Commission on its working methods, so that all members of the Sub-Commission could have an overall view of the established rules. He believed that such a compilation should be made by the Secretariat, which had all the information necessary for that purpose. Mr. Hatano could then submit the additional guidelines he had mentioned and, if they were approved by the Sub-Commission, they could be incorporated in the compilation. That document should likewise include a section referring to the instruments which set out the Sub-Commission's mandate.

6. Although there had been much support for reducing the number of resolutions dealing with the situation of human rights in individual countries, a great many draft resolutions on individual countries had been submitted again that year. Even if it was too late in the current session to change that state of affairs, it was absolutely essential for the Sub-Commission to adopt the necessary decisions to improve its working methods and reduce the number of such draft resolutions in future. It must be explained once again to representatives of non-governmental organizations (NGOs) and Governments that Sub-Commission resolutions that reproduced resolutions adopted by the Commission or higher organs were of little value. They could usefully be replaced by a report on the human rights situation worldwide or by an overall resolution. In that connection, the unduly mathematical approach proposed by Mr. Weissbrodt for the drafting of such a report might be cause for concern. It was not necessarily because the human rights situation in a given country had been mentioned a great many times by NGOs that it was more serious or more important than the situation in other countries.

7. Mr. BOSSUYT noted that the way in which the Sub-Commission examined the question of violations of human rights throughout the world was fundamental to its review of its work under item 3. The Sub-Commission had played a pioneering role in the adoption of resolutions on the human rights situation in particular countries. The Commission had followed suit, raising the question of whether the Sub-Commission should continue to adopt that type of resolution. Some arguments favoured continuity: if the Sub-Commission abandoned the practice, that might be misunderstood or misinterpreted and might dash the expectations of victims of violations. Certainly, the Sub-Commission had come in for criticism, and many members of the Commission, inter alia, believed that its resolutions were duplications of effort. Nevertheless, would it have been conceivable for the Sub-Commission not to adopt any resolution on the situation of human rights in South Africa during the apartheid era? Was it not nearly impossible for it today to refrain from adopting a resolution on, for example, the situation of human rights in the Middle East, Iran, Iraq, Rwanda or Burundi?

8. But other approaches could also be explored. Several members of the Sub-Commission had referred to the possibility of drawing up a world report on the human rights situation. Under the existing budgetary restrictions, the Sub-Commission appeared to lack the resources for preparing such a report. Amnesty International brought out a report of that type, but it had 250 employees and a network of local contacts in various countries of the world. One could also refer to the report that outlined all human rights violations throughout the world - except in the United States - that was produced by the United States Department of State, which also had substantial resources. Since it could not confine itself to summarizing those reports, the Sub-Commission had to draw its information from United Nations sources. It could not, however, use information deriving from the activities of the international treaty bodies, because they were competent only to examine the situation in States parties to the instruments in question. To use information contained in the summary records of the Sub-Commission meetings and those of the Commission might be an arbitrary approach: it was not because the human rights situation in a given country was mentioned by a number of NGOs that it gave the greatest cause for concern. The information provided under the procedure governed by Economic and Social Council resolution 1503 (XLVIII) was confidential, and therefore could not be used in a world report that would be available to the public at large. Finally, the country reports drawn up by special rapporteurs or working groups were self-contained. On the other hand, the thematic reports covered most types of violation of human rights and were based on the Universal Declaration of Human Rights, a basic text that was applicable to all States. They were, moreover, drawn up by independent experts appointed by the Commission. The use of the information set out in the thematic reports to compile a world report in tabular form would likewise have the advantage of filling a gap in the system, which currently lacked an overall view or inventory of all types of human rights violations in all countries. It would enable the Sub-Commission, if not to draw conclusions, then at any rate to formulate criteria to encourage States to cooperate with the thematic mechanisms and to fulfil better the obligations incumbent upon them in the field of human rights.

9. Those proposals were merely preliminary in nature, but the Sub-Commission should respond to them as rapidly as possible so that the old system could be reformed.

10. Mr. BENGOA, speaking on agenda item 4, said that the topic of traditional practices affecting the health of women and children led the Sub-Commission to consider the question of the universality of human rights and that of cultural particularities. At a seminar in which he had recently participated, some speakers had defended the thesis of the right to absolute relativity of cultures and, consequently, the right, say, to practise excision if a certain culture deemed it necessary. In the ensuing complex debate, some had invoked the universality of human rights and others the right to belong to a specific culture, to defend and reproduce it and to pass it on to the next generation. Mr. Fan Guoxiang had argued that all cultures had their own concept of human rights and that human rights were not the prerogative of the Western Christian world. Members of the Sub-Commission had often spoken out against a partial and stereotyped approach to human rights that failed to take account of cultural diversity. But general recognition of the applicability of certain rights to all human beings did not necessarily imply the

homogenization of cultures or the loss of the ability of human beings to resolve common problems by completely different means. Human rights imposed a limit upon particularity. They were the product of the process of development of the human species which demanded that all persons living on the planet should be accorded with greater dignity every day. In that sense, the fact of belonging to a particular culture could not constitute an excuse, a valid reason or a justification for violating universally recognized rights that had been acquired by the human being as part of that development process. The Special Rapporteur had spoken of the balance that had to be established between respecting a culture and its development and defending the universal character of human rights. It was to be hoped that the Sub-Commission would continue to distinguish between that which formed part of the unrestricted defence of human rights - such as the struggle against certain intolerable practices - and respect of cultural diversity.

11. With reference to agenda item 3, he considered, as already stated, that in order properly to carry out its task the Sub-Commission should try to find a means of distinguishing between strictly political discussions, on the one hand, and analysing human rights violations, on the other; should endeavour to rid itself of the selectivity as a result of which certain countries permanently formed the subject of resolutions while others, for various reasons, were never mentioned; should take account of advances and setbacks in human rights matters in various countries and not be content with quick statistical analyses; and should conduct a detailed study of the position with regard to human rights in the world that would make it possible to analyse new situations as they arose. In addition, the United Nations system ought to have at its disposal an annual indicator of the state of human rights in the world that would, in an objective manner, describe the situation and trends in separate countries. The draft resolution (E/CN.4/Sub.2/1996/L.5) of which he was a sponsor contained proposals to that effect. It was clear that an idea of that kind, if it was to be realized in practice, would have to command a broad consensus within the Sub-Commission and would also have to be endorsed by the Commission. The draft resolution at least had the merit of officially opening the debate on the issue within the Sub-Commission.

12. Mr. HATANO said that he wished to make two suggestions relating to the methods of work of the Sub-Commission, one on the rules of procedure and the other on resolutions and decisions adopted under agenda item 6. The rules of procedure of the functional commissions of the Economic and Social Council, which were the only rules applicable to the Sub-Commission, were incomplete in many respects and not fully appropriate to the Sub-Commission, which was composed of independent experts. He therefore suggested that a set of consolidated rules of procedure and guidelines expressly applicable to the Sub-Commission should be prepared in the form of a brochure and distributed not only to members but also to governmental and non-governmental observers. The brochure would review, chapter by chapter, all the organizational issues arising in connection with the work of the Sub-Commission. A number of the rules of procedure of the functional commissions of the Economic and Social Council, amended as necessary, could be reproduced. The brochure would also contain the guidelines on studies, resolutions and speaking time already adopted by the Sub-Commission in 1992, supplemented by other guidelines governing, for example, voting procedures, alternates and observers, the latter drawn up in consultation with the parties concerned.

13. Turning to the question of resolutions adopted under agenda item 6, he suggested that, in order to meet the requirement that it should undertake a thorough examination of information concerning alleged human rights violations and at the same time avoid duplicating the work with the Commission and reduce the number of resolutions addressed to the Commission, the Sub-Commission should adopt a new working method consisting of 10 steps. First, the Sub-Commission would hold a closed meeting immediately after hearing all statements under item 6. Second, the members would be invited to propose the country or countries where the human rights situation was, in their view, worthy of discussion. Third, after considering those proposals, the Sub-Commission would decide which country situations should be taken up at the current session, taking full account of certain facts such as whether the country in question had already formed the subject of a decision or resolution by the Sub-Commission or the Commission at earlier sessions, whether a decision had been taken under resolution 1503 (XLVIII), whether a Special Rapporteur had been appointed by the Commission, and whether the given country situation had been dealt with or was under consideration by another United Nations organ or by a specialized agency. Fourth, the Sub-Commission would appoint a member as coordinator for each country, making sure that the appointee was not committed either to the NGO which had brought up the situation or to the Government concerned and also taking account of the language to be employed in the "tripartite negotiations" that would follow. Fifth, the coordinators would invite the representatives of the NGO and the Government concerned to join the tripartite negotiations with a view to drafting an agreed resolution or decision on the given situation. Sixth, in the event that the representatives of the NGO or the Government refused that invitation, the coordinator should be able to draft a resolution or decision in consultation only with the accepting party, the fact that one of the parties had declined the invitation being duly mentioned in the preambular paragraph of the final resolution or decision. Seventh, the chairperson of the Sub-Commission would arrange for conference rooms to be placed at the coordinators' disposal for the tripartite negotiations. Eighth, the Sub-Commission should, if possible, set aside one or two meetings at each session so that several sets of negotiations might take place simultaneously. Ninth, the coordinators would orally report the result of their efforts to the Sub-Commission. Tenth, the Sub-Commission would adopt such draft resolutions or decisions prepared by the Coordinators as it might deem appropriate.

14. That new mechanism might seem ambitious, but the Sub-Commission had everything to gain from trying it out. First of all, that procedure would give it a knowledge of the "objective facts" regarding the human rights situation in a particular country. Secondly, it could expect the Government concerned to actually implement the resolution or decision adopted, since it would have been agreed to during tripartite negotiations. He hoped that Sub-Commission members and observers would comment on those two proposals.

15. Mr. ALFONSO MARTINEZ said, with respect to agenda item 4, that he wished to associate himself with previous speakers who had congratulated Ms. Warzazi on her report (E/CN.4/Sub.2/1996/6). In view of the scale of the problem, he proposed that the Sub-Commission should request the Commission on Human Rights to consider appointing a special rapporteur who would be responsible for analysing practices, and not merely those of a traditional nature, affecting the health of women and children. As for agenda item 3, he thought that the

proposals that had been made to improve the Sub-Commission's working methods deserved further consideration. He endorsed Mr. Hatano' suggestion for codifying the Sub-Commission's working methods and procedures. The process should be set in train and would have to be given practical application by the Economic and Social Council.

16. Turning to consideration of matters which were the subject of agenda item 6, he said no one should think that the main concern of the Sub-Commission was learning how to deal with such questions. It had other, far more pressing problems to deal with. He did not agree with Mr. Bossuyt that everything the Sub-Commission did on the subject was bad. As for the ideas contained in draft resolution E/CN.4/Sub.2/1996/L.5, it seemed to him that their application would make the Sub-Commission simply an adjunct of the Commission on Human Rights, which was certainly not what the Commission wanted. The Sub-Commission should preserve its independence and its capacity for generating ideas. By opting for thematic procedures which would concern all the countries in the world, the Sub-Commission would forego condemnation of particular countries. It was important to consider how the overall question of human rights was dealt with within the framework of the United Nations. There were certainly some themes which deserved more attention than others. Some countries were the subject of special procedures, while others, for political reasons, were not considered despite grave human rights violations.

17. If the Sub-Commission did not intend to give up its independence, the selection of those countries whose situation it wished to consider under agenda item 6 should not be undertaken solely in the light of the thematic reports that were submitted to the Commission. Those reports focused mainly on particular regions of the world and were therefore not universal in nature. In that connection, it should be made clear that thematic reports had originally been intended to replace the practice of condemning certain countries individually. Not only had that objective not been achieved but the Commission on Human Rights had continued to appoint special rapporteurs and independent experts to study the human rights situation in particular countries. Furthermore, thematic working groups had even gone so far as unilaterally to alter the mandate the Commission had given them, thereby prompting criticism from third-world countries.

18. Turning to paragraph 3 of draft resolution E/CN.4/Sub.2/1996/L.5, he said he found it at the very least unrealistic that two special rapporteurs could be entrusted with the task of determining which country deserved to be denounced, condemned or penalized. How, he wondered, could two people on their own have sufficient knowledge of all the countries in the world in order to make such a choice? There, too, the principle of universality was at great risk of being infringed. Furthermore, there was absolutely no mention in the paragraph of the views either of Governments or of NGOs.

19. Faced with such a profusion of reports, working groups and procedures of every kind, the Sub-Commission should undertake a serious study of its working methods, especially in the light of its resolution 1992/8, and above all it should not take any hasty decision.

20. Mr. MAXIM also considered that it was not realistic for the time being to consider publishing an annual report on the human rights situation in the world. The proposal should, however, be considered again at a future session.

21. He also doubted whether the experts were always able to distinguish truth from falsehood in the manifold allegations formulated by NGOs and in Government replies. He had the impression that the experts were reduced to spectators at rhetorical jousts between NGOs and Governments, and that it was very difficult for them to formulate an objective and informed judgement for the simple reason that no expert could have a deep understanding of all situations that arose. Consequently, he proposed that the experts should divide up into various groups, each of which would be responsible for considering a cluster of situations and engaging in a genuine dialogue with the countries and NGOs concerned.

22. As for the agenda, the Sub-Commission, so as not to reconsider certain questions mechanically year after year, should decide which were the items that should appear every year or every two years, and which should be added to or removed from the agenda. Mr. Hatano's proposal concerning the appointment of a coordinator for draft resolutions deserved further consideration. It might enable the draft resolutions, whose initiators were often the authors of the allegations against the countries concerned, to be made more balanced.

23. Mr. JOINET, speaking on agenda item 3, said that, in order to save time during voting by secret ballot on a large number of draft resolutions at the same meeting, the Sub-Commission could ask the Secretariat to distribute the necessary number of ballot papers to experts at the beginning of the meeting and to use two ballot boxes rather than one.

24. The preparation of the report mentioned in paragraphs 2 and 3 of draft resolution E/CN.4/Sub.2/1996/L.5 might well raise a number of problems. How, for example, were countries appearing in it to be chosen and how was one to prevent situations that were not of the same degree of seriousness being dealt with on the same plane? In any event, the Sub-Commission could always try, and if it adopted the draft resolution it should so inform the special rapporteurs, because that would affect their work. As for paragraph 4 of the draft resolution, it barred the Sub-Commission from taking measures regarding a country whose situation was already on the agenda of the Commission on Human Rights. It was absolutely essential to amend that paragraph so as to enable the Sub-Commission to consider the situation concerned when exceptionally serious developments occurred in the meantime.

25. He did not favour the proposal made by Mr. Hatano at a previous meeting whereby any draft resolution emanating from an NGO would be declared inadmissible. He considered such draft resolutions to be positive, because they frequently prompted a constructive dialogue between the experts who agreed to take them over, the NGO in question and the Government concerned. The same dynamic could operate when it was a Government that took the initiative for a draft resolution. He himself had never taken such an initiative; the draft resolutions of which he had become a sponsor had invariably emanated from NGOs or, sometimes, from Governments, and he had always sought to establish a dialogue between the initiators and the Governments covered by the draft.

26. As for the proposals made by Mr. Hatano at the current meeting, the appointment of coordinators for draft resolutions would certainly enhance coordination, but by the same token would lengthen the time required to prepare draft resolutions. The idea of producing a brochure setting out the Sub-Commission's procedures and its decisions regarding its working methods was a very interesting one. On the other hand, codification should be postponed because, unlike compilation, it necessarily entailed substantive changes. Turning to the guidelines laid down in resolution 1992/8, he said that if certain matters relating to working methods were not dealt with there it was because the sponsors had not been able to agree on them. Since the situation had changed, it was perhaps time to reconsider them. As for the conditions which, according to Mr. Hatano, the draft resolutions should satisfy in order to be declared inadmissible, they were so numerous that one might ask oneself whether it would not be simpler to delete item 6 of the agenda. For all those reasons, Ms. Palley's approach seemed preferable to Mr. Hatano's. The Sub-Commission should turn its experience to good account rather than adopt a new system which could take years to develop.

27. Replying to a comment made by Mr. Maxim, he said it was normal that NGOs and Governments should put forward their respective arguments. The role of the experts was precisely to reach an opinion in the light of those arguments and of other information which they had been able to gather elsewhere.

28. Mr. BOUTKEVITCH, speaking on agenda item 4, complimented Mrs. Warzazi on the quality of her report on traditional practices affecting the health of women and children (E/CN.4/Sub.2/1996/6). He associated himself with her conclusion that Governments must be motivated and involved in action to counter such practices but must also be able to count on active solidarity on the part of the international community.

29. Turning to agenda item 3, he said that the Commission's recommendations to the Sub-Commission in resolution 1996/25 included one - concerning rationalization of the Sub-Commission's agenda - that was unchallengeable, although some issues would perforce continue to fall under several different items. A regular revision of the agenda to incorporate more topical themes and possibly to discard less urgent ones might also be contemplated. At all events, the Sub-Commission must guard against repeating mistakes such as that committed in the case of the item concerning the right to leave and return to one's country, which had been dropped from the agenda before any final settlement had been reached. It was a question that called for priority consideration by the Sub-Commission. In addition, the Sub-Commission must avoid producing virtually identical resolutions on the same subject year after year and perhaps attach less importance to resolutions on specific countries and more to those dealing with the prevention of violations in general. In that connection, it should be noted that resolutions were not the sole end product of the Sub-Commission's work and that other documents produced by the Sub-Commission could have an impact on the situation in countries where human rights were being violated.

30. Again under the heading of reorganization of working methods, the Sub-Commission might decide to re-examine some of the conclusions of expert reports that had been somewhat neglected or watered down in the resolutions. The same applied to the conclusions of the special rapporteurs which, since

they were no longer formally adopted, constituted a dispersed and hence little-used source of information. Another possibility was to ask the experts, following submission of their report and conclusions, to share their personal feelings on the situation in a particular country. The members of the Sub-Commission should also be able to address questions to representatives of Governments or NGOs, not in order to dispute their statements but to ask for clarifications. Lastly, he requested that communications from Governments, NGOs or other sources should be transmitted to the members of the Sub-Commission as soon as they were received and not just during the sessions, so that they could be examined at leisure.

31. Mr. FAN Guoxiang said that he agreed with Mr. Weissbrodt on the need to give more attention to the way in which certain situations evolved, for example the human rights situation since the end of the cold war or the resurgence of supposedly eradicated phenomena such as apartheid. The Sub-Commission could reflect on which agenda item would be best suited to such an exercise. With regard to Mr. Bossuyt's suggestion, while he appreciated all efforts to adopt a new approach to item 6, he felt that the particular approach advocated might create more problems than it solved. Basing the proposed global report exclusively on thematic reports carried the risk of presenting a misleading picture of the situation. Of the 14 thematic rapporteurs appointed by the Commission, 12 dealt primarily with the protection of civil and political rights and only two with economic, social and cultural rights. Moreover, the great majority of countries considered in the reports focusing on civil and political rights were developing countries. There again, a deliberate angle was being adopted that might present a distorted view of the facts and undermine the Sub-Commission's credibility by casting doubt on its members' impartiality and objectivity. The Sub-Commission should not be bound by the decisions of other human rights bodies or by the conclusions they reached.

32. Finally, he warned the Sub-Commission against the hasty adoption of new procedures and advocated further reflection on the matter.

33. Mr. LINDGREN ALVES proposed the deletion of agenda item 4 as a contribution towards rationalization of the Sub-Commission's working methods since the only matter under consideration was Mrs. Warzazi's report on traditional practices affecting the health of women and children (E/CN.4/Sub.2/1996/6), which by right should come under item 11.

34. He did not support Mr. Bossuyt's proposal to use thematic reports as the source for a global report. Such reports dealt with specific phenomena and there was also the risk of duplication between the activities of the thematic rapporteurs of the Commission and the Sub-Commission. The global report should be as exhaustive as possible in terms of both issues addressed and countries studied. It should be an objective and not a selective document, since no country was free from human rights violations.

35. With regard to the practical compilation of such a report, NGOs might be asked to assemble their findings in a preliminary report to the United Nations so that their valuable contribution could be put to better use. Governments would be invited to send in their comments and the whole mass of material would then be referred to one or two members of the Secretariat for

preliminary sorting of the raw data. Information could also be gathered within the United Nations, initially through collaboration among all human rights bodies, as recommended in the Vienna Declaration, and in the field; in that regard, the United Nations Development Programme (UNDP) seemed best placed to provide comprehensive data on the human rights situation in different countries. The High Commissioner for Human Rights could be approached in connection with the preparation of a preliminary draft report that would then be analysed in detail by a working group of the Sub-Commission composed, say, of five members from the five regions. As financial resources would be required for the purpose, if the Centre for Human Rights was involved in the process, the Sub-Commission might even contemplate suspending the proceedings of one of its working groups in order to release funds on behalf of the group of five experts, who could meet in early 1997 and submit a preliminary draft report to the Sub-Commission at its forty-ninth session. The Sub-Commission would then decide whether or not to continue adopting resolutions on specific countries, depending, for example, on the seriousness of the violations perpetrated.

36. Mr. JOINET said that in his experience UNDP was reluctant to provide information on human rights violations in individual countries for fear of jeopardizing its future relations with the Governments concerned.

37. Mr. LINDGREN ALVES thought that UNDP might perhaps agree to send data to the United Nations if it was intended for information and not for publication. At all events, it was important to ensure that the idea of a global report remained in the Sub-Commission's programme of work and gained ground over the year ahead.

The meeting rose at 1.05 p.m.